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(2)

No. 85-1827

In The

Supreme Court of the United States

October Term, 1985

GUY GRIDER,

Petitioner,

v.

TEXAS OIL & GAS CORP. and
TXO PRODUCTION CORP.

Repondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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TEXAS OIL & GAS CORP. and
TXO PRODUCTION CORP.

June, 1986

38 pp

QUESTION PRESENTED

1. Petitioner has cast the question for this Court to decide as follows:

> "Whether denying a litigant the opportunity to visit his own land to conduct pretrial discovery constitutes a denial of that litigant's constitutional right to due process of law?"

As will be shown more fully herein, Respondents vehemently and strenuously deny that the question, as stated, accurately sets forth the true issue before this Court or the outcome of the proceedings below.

Accurately stated, the question Petitioner really seeks this Court to address is: Whether the Oklahoma Supreme Court has violated due process by ruling that discovery procedures to inspect property are not so broad as to grant to a litigant personal keys to an oil/gas production facility jointly owned by various parties who have agreed among themselves that one of the parties shall manage and operate the facility for the joint account and benefit.

PARTIES TO THE ACTION

Pursuant to Supreme Court Rule No. 28.1 Respondents state that they are owned by a parent corporation, U.S. Steel Corporation, and Respondent Texas Oil and Gas Corp. has one subsidiary corporation which is not wholly-owned, TEX-CON Corp.

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JURISDICTION

Petitioner has incorrectly cited the jurisdictional basis for a Writ of Certiorari from a state court decree. The appropriate jurisdictional basis for such an action is 28 U.S.C. Section 1257(3).

STATEMENT OF THE CASE

Respondent has no particular quarrel with the factual points set forth in Petitioner's Introduction and Statement of the Case, except for the following particulars. Some of the wells in question are indeed located in secured areas in and around Will Rogers International Airport. The unfettered access Petitioner seeks to all of the production facilities could indeed pose not only a threat to Petitioner himself, but to all visitors to the Airport property. Security and safety have been the paramount considerations in the approval by airport authorities and the Federal Aviation Administration in permitting oil and gas exploration to take place on the airport properties. The original operator, Ratliff Exploration Company, did not deny Petitioner his own personal keys to such facilities simply because Petitioner questioned certain billing practices of the former operator. The security and safety of all parties has been and is the single factor in this decision.

Petitioner states that the refusal to allow Petitioner his personal key is contrary to the "plain language of the

Operating Agreement...." His statement is again misleading. The pertinent provision of the Agreement between the parties provides only for reasonable access. Petitioner, through his rather petulant request for his own personal keys, desires unfettered and unlimited access to the facilities contrary to the agreement between the parties that Respondent shall operate the properties exclusively. Petitioner further states that the trial judge, Judge Blevins, granted his Motion for Entry Upon Land for Inspection. This is again misleading. The ruling of the trial court, which was subsequently overruled by the Oklahoma Supreme Court, was that the Petitioner could indeed have his own key to every single well jointly owned by the parties.

Petitioner clearly has the right under the Agreement between the parties and under the pertinent provisions of the Oklahoma Statutes[1] to visit the facilities at any time. Further, Respondents have repeatedly advised the Petitioner that he has every right to visit the facilities and observe

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1 12 O.S. 3211(a)(2).

operations, as set forth in those letters from the Respondents to the Petitioner attached in the Appendix hereto. The only request of the Petitioner which the Respondents have refused is that he be allowed unlimited access to the facilities. Neither the Respondents nor the courts of Oklahoma have ever denied the Petitioner the right of inspection and observation.

However, aside from these rather deceiving factual assertions, it is the manner in which Petitioner has cast certain conclusions in his Introduction and Statement to which Respondent takes the most vigorous objection.

It has been demonstrated above that Respondent and the Courts of Oklahoma have consistantly confirmed Petitioner's right to visit the premises and observe operations. However, Petitioner continues to mislead the Court by characterizing the premises as "his own land." First, oil and gas leases, under Oklahoma law, are not real estate in the normal sense of the word, but only an interest in the real estate which entitles the owner to explore for hydro-

carbons.[2] Petitioner would apparently have this Court believe that the Respondents were somehow denying Petitioner his constitutionally protected right to use and enjoy his property. This is simply false.

Next, as admitted by Petitioner, the property in question is jointly owned. As in almost all ventures concerning real estate or in this case interests in real estate the parties have agreed among themselves to appoint an operator or managing partner to exclusively control the parties' joint property. The Petitioner's remedy if he is dissatisfied with the operations of the manager is removal and appointment of a new manager, an issue which does not even remotely rise to constitutional or federal significance.

Because the contractual dispute cannot conceivably rise to constitutional significance, the Petitioner has essentially cast his request for a Writ of Certiorari in the following way:

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2 Cate v. Archon Oil Company, Inc., 695 P2d 1352 (Okl. 1985); Hinds v. Phillips Petroleum Company, 591 P2d 697 (Okl. 1979); Mohoma Oil Company v. Ambassador Oil Corp., 474 P2d 950 (Okl. 1970).

> The denial by the Oklahoma Supreme Court of Petitioner's request for an individual key to every oil production facility denied Petitioner his due process rights, in that the intent and purpose behind normal pretrial discovery and a meaningful trial have been destroyed.

In short, this case is really a dispute over a key, not property rights or even proper access to the courts. The Respondents submit that Petitioner's request for Certiorari is wholly without merit and that this Court should not hesitate to exercise its discretion to deny Petitioner's Writ.

REASONS FOR DENYING THE WRIT

I. Neither the Oklahoma Discovery Code nor Due Process Principles Justify or Require Reversal of the Judgment Below.

Petitioner complains that the Oklahoma Supreme Court's interpretation of certain provisions of the Oklahoma Discovery Code renders pretrial discovery meaningless in his case and, therefore, due process has been violated. Once again, Petitioner misleads the Court.

To repeat, Petitioner has not been denied discovery. Petitioner has only been denied a key. In addition to the

Oklahoma Discovery Code, under the Agreement of the parties, Petitioner may visit, inspect and observe the property in question and operations thereon at any time. Petitioner may, by such inspection and observation, complete any discovery he needs to present a meaningful case at trial. Further, because Petitioner has seen fit to repeatedly emphasize this aspect, it is necessary that Respondent again emphasize that not only is Petitioner incorrect in stating that inspection rights have been denied, but he is clearly incorrect in stating that he has been denied certain rights to "his own land." The properties in question are jointly owned with exclusive management and control of the properties delegated to the Respondents.

The pertinent provision of the Oklahoma Discovery Code in question is as follows:

> **Section 3211. Production of Documents and Things and Entry Upon Land For Inspection and Other Purposes.** A. Any party may serve on any other party a request: . . . 2. To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of

> Subsection B of Section 3 of the Discovery Code . . ."[3]

Petitioner maintains that the above-quoted language clearly indicates that he should be allowed a key to the facilities and the Oklahoma Supreme Court's interpretation to the contrary "chokes off normal and necessary pretrial discovery." Clearly, Petitioner's view of this "plain language" is very imaginative. The Section speaks only of entry and inspection for certain purposes after service on the party in possession of the property of a request for such purposes, not unlimited access without any notice to any party. It should be noted by this Court that this provision of the Oklahoma Discovery Code is virtually identical to the pertinent Federal Rule.[4]

Certainly then, a plain and commonsense reading of the statutory provision complained of would indicate that nothing therein dictates by implication or logic that the Oklahoma Supreme Court was wrong in denying Petitioner's

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[3] 12 O.S. Section 3211(a)(2).

[4] Fed. Rule Civ. Proc. 32(A)(2), 28 U.S.C.A.

request for his own personal set of keys.

The decision below was also formally correct. Petitioner has not cited to this Court or to any inferior court a single case indicating that modern discovery codes should allow or should be interpreted to allow litigants unlimited and unfettered access to facilities which are under the exclusive control and management of their opponents.

The decision below is not only formally correct, but fairly and equitably preserves the rights of all parties. In addition to inspection and observation rights Petitioner has by statute and contract, Petitioner may employ his own field personnel (in oil field parlance referred to as a "pumper") to observe any operations of the Respondents. Petitioner may also employ the services of petroleum engineers, geologists and all other technical personnel who could and should be allowed the right to inspect any and all observations of the Respondents.

Any decision by this Court to reverse the lower court's decision could only mean virtual chaos in the judicial system and in the oil and gas industry in general. Such a decision

would mean that any case involving real estate would mandate that all parties have uncontrolled access to the property of their opponents. In the oil and gas industry, thousands of passive, non-industry investors in oil and gas operations nationwide would then be allowed unlimited access to facilities and operations which are by their nature inherently dangerous. Such a result simply cannot be countenanced.

Petitioner premises his entire case upon a denial of due process through his inability to obtain a set of keys from the Oklahoma courts. Respondents submit that Petitioner seeks to expand the definition of due process to impossible limits. There has been no limitation on pretrial discovery nor any attempt to forestall Petitioner from presenting every available claim. As indicated herein, Petitioner has a vast array of procedures for discovering relevant evidence both through the provisions of the Oklahoma Discovery Code and his own contractual rights. There is no logical connection, nor can there be, between a personal set of keys and Petitioner's ability to access, visit and observe the oil and

gas leases and operations in question. Petitioner's true contention is that inasmuch as he was unsuccessful in the lower courts, his right of due process has therefore necessarily been violated. This is of course untenable.

This Court and others in the Federal system have repeatedly held that due process is not violated, and indeed the judicial process is improved, by having reasonable bounds on what process is really due and necessary:

> "Full and complete discovery should be practiced and allowed, but its processes must be kept within workable bounds on a proper and logical basis for the determination of the relevancy of that which is sought to be discovered."[5]

> "(T)here must be some limitations on discovery. Courts must exercise their discretion to prevent the discovery process from becoming oppressive and unfair. . . ."[6]

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5 Jones v. Metzger Dairies, Inc., 334 F2d 919 (5th Cir. 1964), cert. denied., 379 U.S. 965, 85 S.Ct. 659, 13 L.Ed.2d 559 (1965).

6 Dresser Industries, Inc. v. Doyle, 40 F.R.D. 478 (N.D. Ill. 1966).

> "(D)ue process of law has never been a term of fixed and invariable content."[7]
>
> "The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights."[8]
>
> "The requirements imposed by that guarantee are not technical, nor is any particular form of procedure necessary."[9]
>
> "A party is not deprived of his property without due process of law when, as regards the issues affecting it, he has by the laws of the state a fair trial in a court of justice according to the applicable modes of proceeding."[10]

As can be seen from the above cases, Petitioner has been denied no constitutional rights. He has been afforded complete access to the courts and all reasonable means to present evidence bearing on his claim at trial. Simply put,

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7 Federal Communication Commission v. W.J.R. The Goodwill Station, 337 U.S. 265, 69 S.Ct. 1097, 93 L.Ed. 1353 (1949).

8 NLRB v. Mackay Radio and Teleg. Co., 304 U.S. 333, 351; 58 S.Ct. 904; 82 L.Ed. 1381, 1393 (1937).

9 Inland Empire District Counsel, Lumber and Saw Mill Workers' Union v. Millis, 325 U.S. 697, 710; 65 S.Ct. 1316; 89 L.Ed. 1877, 1885 (1944).

10 Davidson v. City of New Orleans, 96 U.S. 97, 6 Otto 97, 24 L.Ed. 616 (1877).

Petitioner has failed to demonstrate even a remote connection between his single-minded desire for his personal set of keys and the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Finally, Petitoner cites several cases which he alleges mandate a reversal of the lower court in order that Petitioner be accorded a "meaningful" trial. All of the cases cited by Petitioner relevant to constitutional issues in a civil context bear only upon the issue of access to the courts through notice and an opportunity to be heard, or access to the courts in general. Petitioner has failed to point out, and indeed cannot point out, in what way any of these cases bear upon the issue of the disputed keys. As pointed out in a case itself cited by the Petitioner:

> "The requirements of due process are sufficiently flexible to accomodate themselves to various persons, interests and tribunals without reduction to a stereotype and hence to absurdity."[11]

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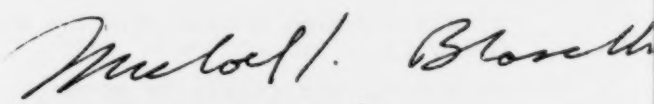
[11] Boykins v. Fairfield Board of Education, 492 F.2d 697, 701 (5th Cir. 1974), cert. denied., 420 U.S. 962, 95 S.Ct. 1350, 43 L.Ed.2d 438 (1975).

Petitioner's request that this Court grant certiorari in order that he may have keys to the facilities in question is, candidly, an "absurdity."

CONCLUSION

For all of the reasons noted above, this Court should exercise its discretion to deny the Petition for Writ of Certiorari.

Respectfully submitted,



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TEXAS OIL & GAS CORP. and
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June, 1986

AFFIDAVIT OF SERVICE AND MAILING

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Michael J. Blaschke, being first duly sworn deposes and says:

1. That the Brief In Opposition To Petition For Writ Of Certiorari To The Supreme Court Of The State Of Oklahoma to which this Affidavit is attached has been served upon all counsel of record for the parties in this cause in accordance with the provisions of Rule 28 of the Rules of the Supreme Court of the United States by placing three copies of the same in the United States Mail, first class postage prepaid, properly addressed to:

Mr. Daniel J. Gamino
Daniel J. Gamino & Associates, P.C.
3315 N.W. 63rd
Oklahoma City, Oklahoma 73116
Attorney for Petitioner

Mr. Robert D. Baron
Fellers, Snider, Blankenship, Bailey & Tippens
Attorneys at Law
24th Floor, First National Center West
Oklahoma City, Oklahoma 73102

2. That the foregoing represents service on parties required to be served under the provisions of Rule 28 of this Court.

3. That to my own personal knowledge and pursuant to Rule 28.2 of the Rules of this Court, 40 copies of this Brief In Opposition To Petition For Writ Of Certiorari To The Supreme Court Of The State Of

Oklahoma were mailed, first class postage prepaid, properly addressed to the Clerk of the Supreme Court of the United States on the 4 day of June, 1986, which is within the time allowed for filing under the Rules of this Court.

Michael J. Blaschke
MICHAEL J. BLASCHKE

Subscribed and sworn to before me on the 3rd day of June, 1986.

Kathy Knight
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA (SEAL)

KATHY KNIGHT
NOTARY PUBLIC, OKLAHOMA COUNTY
My Commission Expires May 7, 1990

APPENDIX

March 21, 1985

Mr. Daniel J. Gamino
Daniel J. Gamino & Associates, P.C.
3315 N.W. 63rd
Oklahoma City, OK 73116

Re: Right to Reasonable Access to Records and Locations; Agreement Pursuant to Temporary Order Hearing of March 12, 1985

Dear Mr. Gamino:

We have agreed to reasonable access to locations and records of TXO Production Corp.. In exchange for this agreement you will withdraw your request for injunctive relief in the action against TXO and Ratliff Exploration Company, et al.

Please be advised that your client is allowed the right to reasonable access to locations and joint accounts in which you have an interest. Attached are letters dated October 7, 1983, and January 8, 1985, in which Ratliff Exploration Company advised Mr. Grider of the same rights to inspection.

If your client would like to inspect a location he may do so at any time during business hours by calling Mr. Ron Schafer of our field office or Mr. Bill Robertson at our downtown office. (Phone numbers 745-3453 and 235-8326 respectfully).

For reasons previously given, we cannot allow your client or any other working interest partner his own key to locations. We have the absolute duty to protect the location

(APPENDIX)

for the benefit of all partners. We trust you understand that to allow keys to one partner could necessitate keys to all, which would render the location unsafe and unsecure.

Regarding the inspection of joint account expenses, please call Mr. Bill Robertson at our downtown office and he will set up an appointment with your client at a mutually agreeable time.

Very truly yours,

TXO PRODUCTION CORP.

(s) Leland J. McVay

Leland J. McVay
Vice President
Eastern Oklahoma District

WRH/LJM/cmp

Attachments

cc: Ralph Lamb
Bill Robertson
Ron Schafer
Ed Logan
Jim Gaitis
Emery, McCandless, Gaitis & Bruehl
117 Park Avenue
Oklahoma City, Oklahoma 73102

(APPENDIX)

October 7, 1983

Mr. Guy Grider
220 S.E. 89th Street
Oklahoma City, OK 73149

Dear Mr. Grider:

This letter is written in response to your letter dated September 28, 1983 regarding your joint interest billings and access to the contract areas where you are a working interest owner.

Mr. John Smith of our Accounting Department has advised us that he will be meeting with you following the processing of the August, 1983 joint interest billings which will be sent out the week of October 3, 1983. Mr. Smith further informs us as to the reductions of your billings referred to in your letter of September 28, 1983, were due to the timing and application of your prepayments and not due to incorrect charges relating to properties which you are a working interest owner.

Regarding your access to contract areas where you are a working interest owner, we have no intentions of keeping you from having access to the properties. As called for in the Model Form Operating Agreement A.A P.L. Form 610-1977, Article VI, Section D, Access to Contract Area and Information:

> Each party shall have access to the Contract Area at all reasonable times, at its sole risk to inspect or observe operations, and shall have access at reasonable times to information pertaining to the development or operation thereof, including Operator's book and records relating

(APPENDIX)

thereto.

We will make available to you at all reasonable times, access to the properties which you are a working interest owner. You may contact Mr. Don Estes or Mr. Ron Shafer of our field office located at 6924 S.W. 59th Street, telephone number 745-3453 to make arrangements to get access to these properties. If you are unable to reach Mr. Estes or Mr. Shafer, you can contact Mr. Bill Robertson at our downtown office at 235-8326, who will arrange for your access to the above said properties.

Mr. Guy Grider
October 7, 1983
Page 2

We understand your interest in your investment and recognize your right to have access to the properties in which you are a working interest owner. We hope you can understand our position whereby we cannot permit every working interest owner in every well to have a key to every lock in which Ratliff Exploration Company is the operator for safety and security reasons.

Your cooperation and understanding in this matter will be greatly appreciated.

Sincerely,

(s) R. C. Lamb, Jr.

R. C. Lamb, Jr.
President

RCL:kd

(APPENDIX)

January 8, 1985

Guy Grider
220 S. E. 89th St.
Oklahoma City, Ok 73149

Re: Your letter dated January 4, 1985

Dear Mr. Grider:

Per our standard operating agreement, all participants have the right to audit the expenses that have been charged to the joint account, therefore, we would be happy to have you or your representative to come to our Duncan office and audit any of the wells that you have participated in. If after reviewing our files you have a specific question concerning a charge by a vendor, it would be our pleasure to direct the vendor to provide you with a written response to your letter.

Please contact me at 235-2916 to set up a specific time to come to our office to perform your audit.

Very truly yours;

RATLIFF EXPLORATION COMPANY

(s) John B. Smith

John B. Smith
Controller

JBS/sp